

JuanJose Martinez-Madera A 14-647-093 Detained at ICE-El Centro Detention Facility 1115 North Imperial Ave. El Centro, Cal. 92243-1739

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF CALIFORNIA**

FILED

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IN THE MATTER OF :

JUANJOSE MARTINEZ-MADERA, A 14-647-093 )

(Petitioner, Plaintiff) (In Pro Se) )

Civil FileCLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
January 15, 2008BY RM DEPUTY

Vs. )

Case No. 07CV2237 JLS (WMC)

**MICHAEL CHERTOFF**, Secretary of the Department of  
Homeland Security; **MICHAEL B. MUKASEY**, Attorney  
General; **JULIE L. MYERS**, Assistant Secretary, United States  
Board of Immigration and Customs Enforcement (BICE); **ROBIN**

**BAKER**, Director, San Diego ICE-Field Office District Director; )**ROBERT G. RILLAMAS**, Assistant ICE-Field Office Director- )El Centro; **JOEL MATA**, Supervisor of Detention and )

Deportation Officers-El Centro Processing Center, )

**Defendants – Respondents** )**NUNC PRO TUNC**

JAN 22 2008

**MOTION FOR  
APPOINTMENT OF COUNSEL**

**STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL**

I, Petitioner, JuanJose Martinez-Madera, pursuant to U.S.C. § 1915 18 U.S.C § 3006A humbly requests and moves this Court for an order appointing counsel to represent him in his Writ of Habeas Corpus Petition Case No. 07CV2237 JLS (WMC) filed in this Honorable Court on November 26, 2007 for the following reasons:

1. This habeas action was prepared with an eye towards seeking for the court to declare it a class action lawsuit.
2. There are many other detainees in the same predicament as instant petitioner, namely that have been detained in Immigration ICE custody for years already and also need exactly this same form of relief; for a list of some detainees in my dorm similarly situated please see end of Motion and Request for Class-Action Certification enclosed with this petition.
3. Petitioner will be unable to effectively articulate and state his claims through a (**pro-se**) action in light of his being laws, court proceedings & requirements ignorant and needs lots of help in negotiating them. I cannot litigate, argument or present a class-action petition because I am not a lawyer.

Petitioner humbly asks this Court to "evaluate the ability of petitioner to articulate his claims **pro se** in light of the complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952, 954 (9<sup>th</sup> Cir. 1983), accord. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9<sup>th</sup> Cir. 1997).

To weigh the petitioner's ability to articulate his claims in the absence of counsel, a court must measure "the [petitioner]'s ability to articulate his claims against the relative complexity of the matter." *Rand v. Rowland* 113 F.3d at 1525. In addition, counsel may be appointed during federal habeas proceedings if the appointment of an attorney is "necessary for the effective utilization of discovery procedure,... [or] if an evidentiary hearing is required." *Weygandt v. Look* 718 F.2d at 954 which might just be the case if accepted as a class-action lawsuit.

Habeas Corpus proceedings "are of fundamental importance... in our constitutional scheme because they directly protect our most valued rights." *Brown v. Vasquez*, 952 F.2d 1164, 1169 (9<sup>th</sup> Cir. 1991) (quoting *Bonds v. Smith*, 430 U.S. 817, 827 (1977)) (citing and internal quotations omitted). Consequently, federal law permits a district court to appoint counsel in habeas proceeding under 28 U.S.C. § 2241 when the "interests of justice so require," in instant motion, petitioner has shown that he is unable to afford an attorney. 18 U.S.C. § 3006 A (a)(2)(B). To make this decision, this Court must "evaluate [1] the likelihood of success on the merits as well as [2] the ability of petitioner to articulate his claims pro se in light of the complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952, 954 (9<sup>th</sup> Cir. 1983), accord. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9<sup>th</sup> Cir. 1997).

4. Petitioner is indigent and has (\$00.00) in his account at the El Centro Processing Center (ECPC). See Fee Waiver Form attached to his Motion for Appointment of Counsel accompanying this petition. Since he is in custody, he does not have a source of income or employment. As a result, petitioner cannot otherwise afford to retain counsel for the litigation of this instant Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 if the government decides to oppose his Writ of Habeas Corpus, thus, the appointment of counsel is appropriate.<sup>1</sup>

<sup>1</sup> In another habeas corpus proceedings, the Honorable Roger T. Benitez of the United States District Court for the Southern District of California has appointed the Federal Defenders of San Diego, Inc. as counsel of record for a similarly-situated petitioner. *Casas-Castrillan v. Department of Homeland Security*. Case No. 05-CV1552-Ben (NLS) (S.D. Cal. Jan.31, 2006). Likewise, the Honorable Irma E. Gonzalez appointed counsel in *Hanna v. I.N.S.* Case No. 01CV0382-IEG (JFS) (S.D. Cal. Apr.26, 2001). The Honorable Napoleon A. Jones has appointed the Federal Defenders of San Diego, Inc., based upon the petitioners' financial eligibility, their likelihood of success on the merits of the habeas petition, the complexity of the legal issues involved in the habeas action, the petitioners' lack of education and limited proficiency in English, and the need for assistance in obtaining discovery from federal immigration officials. See *Chaydy v. I.N.S.* Case No. 00CV1687-J (JAH) (S.D. Cal. Sept. 1, 2000). Other judges in the United States District Court for the Southern District of California have made similar appointments See *Aphayavong v. I.N.S.*, Case No. 00CV0804-J (LAB) (S.D. Cal. June 22, 2000); See also *Gebbru v. I.N.S.* Case No. 01CV0625-JM (POR) (S.D. Cal. Jul. 11, 2001) *Sahagian v. I.N.S.*, Case No. 01CV066-BTM (RBB)(S.D. Ca. May 18, 2001); *Cao v. I.N.S.* Case No. 00CV1991-L (JAH) (S.D. Cal. Oct. 10, 2000).

7. From what is understood, a class-action Habeas Corpus lawsuit has already been filed in the Federal Central District Court (in Los Angeles) unfortunately, I, like many other detainees here, am/are not (a) member(s) of that class because I/we, do not reside in the Central District's jurisdiction, therefore, since I/we, belong in the Southern District Court's jurisdiction. Venue is proper in this, U.S. Southern District Court I'd like to include as part of the class all other detainees similarly situated in this Southern district, and for that to happen, appointment of counsel is crucial.

Wherefore, due to the reasons stated above, statements of facts, memorandum of points and authorities in support of petitioner's Motion for Appointment of Counsel, petitioner respectfully and humbly requests and moves this Court that this Motion for Appointment of Counsel be granted.

Thank you for any help provided.

Dated this: January 15, 2008

Sincerely and Respectfully Submitted,

A 14-647-093      Petitioner (In Pro Se)

JuanJose Martinez-Madera



Petitioner's Signature